

REMARKS

Favorable reconsideration of this Application in view of the following discussion is respectfully requested.

Claims 2-8, 10-13, 15 and 16 are pending in the present Application. Claims 2, 3, 10, 13 and 15 have been amended to address cosmetic matters of form. No new matter has been added.

By way of summary, the Official Action presents the following issues: Claims 2-8, 10-13, 15 and 16 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter; Claims 15 and 16 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite; Claims 2-8, 10-13, 15 and 16 stand rejected under 35 U.S.C. § 102 as being anticipated by Sugiyama (U.S. Patent No. 5,912,969); and Claims 6-8 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sugiyama.

REJECTION UNDER 35 U.S.C. § 101

The Official Action has rejected Claims 2-8, 10-13, 15 and 16 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully traverse the rejection.

Applicants' Claims 2-8, 10-13, 15 and 16 clearly recite process claim limitations. Process claims are statutory under 35 U.S.C. § 101 absent a showing that the claimed process does not have a practical application in the technological art (*See In re Alappat*, 31 U.S.P.Q.2d 1545 (Fed. Cir. 1994)).

With regard to the rejection of Claims 2-8, 10-13, 15 and 16 as lacking practical application in the technological arts, MPEP § 2106 provides that:

Office personnel have the burden to establish a *prima facie* case that the claimed invention as a whole is directed to solely an abstract idea

or to manipulation of abstract ideas or does not produce a useful result. Only when the claim is devoid of any limitations to a practical application in a technological arts should it be rejected under 35 U.S.C. § 101 . . . Further, when such a rejection is made, office personnel must expressly state how the language of the claims has been interpreted to support the rejection. (emphasis added)

The rejection merely includes the conclusory statement “In the present case, applicant’s recited claims fail to indicate the use of a computer processing system/method wherein the positive recitation in the claims as a whole breathe life and meaning to achieve the stated claimed invention;”¹ Thus, Applicant respectfully submits that no express statement has been provided as to how the language of the claims have been interpreted to support the 35 U.S.C. § 101 rejection in violation of the guidelines of MPEP § 2106.

Accordingly, should such a rejection be maintained in a subsequent communication with respect to any of the aforementioned claims, Applicant respectfully requests the Examiner provide an express statement on the record in accordance with MPEP § 2106 guidelines explaining how such claim terminology, such as “database,” “duplicated in the past,” “copying,” “previous start time” and “temporal data” is interpreted. More specifically, how such limitations are deficient to define a practical application in the technological arts of useful, concrete and tangible result (i.e., with respect to the prohibition of content duplication). See State Street Bank & Trust Co. v. Signature Financial Group, Inc., 149 F.3d 1368, 1374, 47 (Fed. Cir. 1998) (discussing practical application of a mathematical algorithm, formula, or calculation.).

Accordingly, Applicant respectfully requests that the rejection of Claims 2-8, 10-13, 15 and 16 under 35 U.S.C. § 101 be withdrawn.

¹ Office Action of December 17, 2004, at page.

REJECTION UNDER 35 U.S.C. § 112

The Official Action has rejected Claims 15 and 16 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicants respectfully traverse the rejection.

Applicants have amended Claim 15 to correct a typographical error. Moreover, as Claim 3 has been amended, Applicants submit that Claim 11 recites a proper dependency. Accordingly, Applicants respectfully request that the rejection of Claims 15 and 16 under 35 U.S.C. § 112 be withdrawn.

REJECTION UNDER 35 U.S.C. § 102

The Official Action has rejected Claims 2-8, 10-13, 15 and 16 under 35 U.S.C. § 102 as being anticipated by Sugiyama (U.S. Patent No. 5,912,969). The Official Action asserts that Sugiyama discloses all of the Applicants' claim limitations. Applicants respectfully traverse the rejection.

Amended Claim 2 recites, *inter alia*, an information processing method including:

... a storage step for storing information for discriminating contents duplicated in the past and temporal data as to a previous start time of duplication of said contents in the past into a database; ...

wherein the duplication of the content is prohibited when an interval of time between the current time and the previous start time of duplication of said content in the past specified by the temporal data stored in the database is less than predetermined amount of time.

By way of background, copy protection systems are provided to preclude the copying of original content. For example, copy protection systems may preclude copying all together, or, limit copying to a certain number of instances. However, in such systems, original

content can sometimes be manipulated to be repeatedly duplicated to acquire plural second generation copies of original content data, thus circumventing copyright laws.²

In light of at least the above deficiency in the art, the present invention is provided. With this object in mind, a brief comparison of the claimed invention, in view of the cited references, is believed to be in order.

Sugiyama describes a system for authenticating communication between network devices. For example, as shown in Fig. 1 of Sugiyama, a unique time generating device, such as timer section (4), is provided within the CPU (1) of an electronic device. The electronic device includes a memory (2).³ The memory includes a storage section (6) to store a total time value T_t , which is counted over a time measuring period, such as 100 years. The timer section (4) of the CPU counts the total time value T_t constantly at a predetermined rate. The accumulating section (5) sequentially accumulates each unit of time value or "clock tick" indicated by the time section (4). In other words, the accumulating section (5) calculates an accumulated time T_m , so as to provide an elapsed time ($T_t - T_m$).

As shown more specifically in Fig. 18, the unique time generating device enables an apparatus to authenticate an application program and visa versa. For example, as shown in the flow chart of Fig. 21 at installation, a unique time measurement is provided, encrypted and a time data T_x ($T_t - T_m$) is produced. The time data T_x is then associated with a specific apparatus and specific application software. In this way, only when the two retrieved parameters (i.e., time data t_x) match with each other is the specific computer installed with the correlated computer software.⁴

² Application at page 1.

³ Sugiyama at Fig. 1; Col. 9, lines 33-45.

⁴ Sugiyama at Col. 20, lines 45-48.

Conversely, in an exemplary embodiment of the Applicants' invention as recited in amended Claim 2, an information processing apparatus and associated method are provided wherein the duplication of previously duplicated content is prohibited when an interval of time between a present time and the start time of the prior duplication of the content is less than a predetermined period. This feature enables the processing apparatus and associated method of the present invention to prevent mass duplication of already duplicated content.⁵ Nowhere does Sugiyama disclose or suggest recording a previous duplication start time and comparing that time to a predetermined period for prohibiting duplication.

Simply stated, the claimed duplication start time and the prevention of the duplication of content in accordance with a predetermined interval of time, which is between a current time and a previously recorded start time, has no relation to the matching of an encrypted parameter for the purpose of authenticating an apparatus and/or program. Sugiyama only allows the installation of software in the case where encrypted parameters match. Sugiyama does not disclose or suggest comparing a previous duplication time of content to a pre-established interval for determining whether or not the content can be reproduced, as recited in Applicants' Claims 2 and 3 and any claim depending therefrom. Accordingly, Applicants respectfully request that the rejection of Claims 2-8, 10-13, 15 and 16 under 35 U.S.C. § 102 be withdrawn.

REJECTION UNDER 35 U.S.C. § 103

The Official Action has rejected Claims 6-8 and 13 under 35 U.S.C. § 103 as being unpatentable over Sugiyama. The Official Action cites Sugiyama as disclosing all of the Applicants' claim limitations, with the exception of an express disclosure of the use of more specific discriminating criteria, such as the ISRC parameters. Likewise, the Official Action

⁵ Application at page 70, lines 16-20

states that Sugiyama does not disclose a method of watermarking. In both of these regards, the Official Action states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to arrive at the Applicants' invention. Applicants respectfully traverse the rejection.

With respect to the Official Action's characterization of the ISRC identifiers, Applicants respectfully submit that this rejection is deficient to the extent it relies upon In re Gulack 217 U.S.P.Q. 401, 404 (Fed. Cir. 1983) and/or In re Lowry 32 U.S.P.Q.2nd 1031 (Fed. Cir. 1994). Applicants note that the Official Action has cited these cases in support of a proposition that the ISRC parameters of Claims 6-8 are somehow nonfunctional descriptive material. Applicants note that the cases cited by the Examiner relate to printed matter as a basis for patentability. Of course, an ISRC identifier is a parameter discriminated within Applicants' system in accordance with its specific format and content in order to trigger a determination. The configuration to process this more specific parameter further limits the system of the base claim; this is in start contrast to a mere font of typeface, as discussed in the cited case law. The Official Action has mischaracterized these cases as having anything to do with the configuration of an electronic system to process a specific type and format of electronic parameter in accordance with the recitation of the Applicants' claims. Accordingly, Applicants submit that this rejection is deficient, and should be withdrawn, at least, for this reason alone.

Furthermore, as discussed above, Sugiyama does not disclose all the elements of the pending claims; and, therefore, the Official Action does not present a *prima facie* case of obviousness with regard any of Claims 6-8 and 13. Consequently, Applicants respectfully request that the rejection of Claims 6-8 and 13 under 35 U.S.C. § 103 be withdrawn.

CONCLUSION

As Applicants have not substantively amended the claims in response to any rejection of record, should a further rejection be applied in the next Action based upon newly cited prior art, Applicants submit that such an action **cannot properly be considered a Final Office Action.**

Consequently, in view of the foregoing amendment and remarks, it is respectfully submitted that the present Application, including Claims 2-8, 10-13, 15 and 16, is patently distinguished over the prior art, in condition for allowance, and such action is respectfully requested at an early date.

Respectfully submitted,

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